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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,103	07/31/2003	Anthony J. Hynes	PREC-3612	7750

5409 7590 08/22/2007  
SCHMEISER, OLSEN & WATTS  
22 CENTURY HILL DRIVE  
SUITE 302  
LATHAM, NY 12110

EXAMINER
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BRINSON, PATRICK F

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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08/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/631,103

Applicant(s)

HYNES ET AL.

Examiner

Patrick F. Brinson

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13-26, 29 and 31-34 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10, 13-22 and 29 is/are allowed.
- 6) ☒ Claim(s) 23, 25, 26 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 401,950 to **Hussmann**.

The patent to **Hussmann** discloses a metering device and method including providing a device that includes a base (A), a rotatable shaft (L) and a metering element (J), providing a reservoir (C) having a compressible material line, inserting the reservoir into the device, and positioning the compressible material line between the metering element and the base, moving the metering element to cause a peristaltic effect upon the material within the compressible material line and rotating the shaft causing controlled translation motion of the metering device of a precise unit and dispensing the precise unit of material from the device, as recited in claim 31. The device includes a clamp plate (D), located above the base, and the metering element (J) is translationally slidable and rotatable, wherein it moves over the length of the compressible material line (C), and upon sliding or rotation of the metering element

causes a peristaltic effect upon a material located within the compressible material line further causing a precision dispensing of a unit of material from the device, as recited in claim 23. The flow rate is regulated by appropriately positioning the metering element with piston-rod (I), which is graduated so as to indicate the quantity of liquids injected, thereby making it selectable.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23, 25, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hausmann**.

**Hausmann** does not disclose that the metered amount is within +/- 2% of the desired quantity, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to dispense the material at +/- 2% of the desired quantity, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Wherein the piston rod is

calibrated and graduated, it would be reasonable to believe that the device of **Haussmann** would not meter more or less than 2% of the desired amount.

***Response to Amendment***

3. Applicant argues that **Haussmann** does not teach a reservoir to be attached to the compressible line. From Applicant's disclosure, a reservoir is merely the container in which the metered material is held. The reservoir itself is compressible and thus functions as the compressible line. Applicant further argues that **Haussmann** does not meter a precise amount, however as pointed out by Applicant, the device is a type of syringe, which is used to accurately dispense medication. As pointed out in the preceding paragraph, the piston rod is calibrated and graduated for the purpose of enabling a user to precisely dispense the fluid within the compressible line.

***Allowable Subject Matter***

4. Claims 1-10, 13-22 and 29 are allowed.
5. Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

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P. F. Brinson  
August 19, 2007